

OLL 84-1271  
3 April 1984

MEMORANDUM FOR: Deputy Director for Administration  
Director of Security

Attn:   
✓C/SECOM  
C/ALD/OGC  
C/L&LD/OGC

FROM:

Chief, Legislation Division  
Office of Legislative Liaison

SUBJECT:

OPM Proposed Report on H.R. 4681, the  
"Federal Limitation and Anti-Censorship  
Act of 1984"

1. Attached for your review and comment is the proposed report of the Office of Personnel Management (OPM) on H.R. 4681, the Brooks bill limiting the Federal Government's use of polygraph examinations and prepublication review. OPM's response is limited to commenting upon its responsibilities for approving the use of polygraph examinations for certain Executive Branch agencies. As you may know, full Committee mark-up of the bill by Representative Brooks' Government Operations Committee has not been rescheduled at this time, pending further negotiations between the staff of the Government Operations Committee and the House Permanent Select Committee on Intelligence over the scope of the exemption provided in the bill.

2. OMB has requested our views on the attached OPM report by 5 April 1984. I would appreciate receiving your comments on this report no later than COB tomorrow, 4 April.

Attachment

cc:



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United States  
**Office of  
Personnel Management**

Washington, D.C. 20415

In Reply Refer To

Your Reference

Honorable William D. Ford  
Chairman, Committee on Post Office  
and Civil Service  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for comments from the Office of Personnel Management on H.R. 4681, the "Federal Polygraph Limitation and Anti-Censorship Act of 1984."

OPM has government-wide responsibility over the civilian personnel security and suitability program. Although OPM does not itself administer polygraph examinations, or require prepublication review, nevertheless, it is charged with investigating individuals for access to classified information, and with granting approval for use of the polygraph for certain purposes.

The use of polygraph exams in the federal government, and its implications on the privacy and rights of employees is not a novel issue. In 1965 President Johnson directed a comprehensive review of the use of the polygraph in the executive branch, and issued a memorandum which has since been incorporated into the Federal Personnel Manual. The memorandum acknowledged the intrusiveness of the polygraph, and imposed certain restrictions on its use, while, at the same time, authorizing its usage in criminal and (counter) intelligence-related operations.

Unlike H.R. 4681, President Johnson's memorandum recognized that agencies other than the Central Intelligence Agency and the National Security Agency had "intelligence or counter-intelligence missions directly affecting the national security." Further, unlike H.R. 4681, President Johnson's memorandum recognized that certain agencies or agency components with missions similar to that of the CIA or NSA, require use of polygraph examinations for supplementary employment screening. Adequate procedural safeguards were included, and the Civil Service Commission was granted overall authority to prevent abuse.

Honorable William D. Ford

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OPM, and the Civil Service Commission before it, have used that authority prudently. Although, in certain respects, President Johnson's memorandum allowed agencies a greater measure of discretion than provided either in President Reagan's National Security Decision Directive No. 84 or H.R. 4681, there has not been a single complaint (filed with or brought to the attention of OPM or the Civil Service Commission) of the type of abuse and misidentification noted in the (somewhat sensational) "Findings" of the Act. In the course of the last 19 years, OPM has granted approval to only 3 agencies for polygraph examinations. This approval was granted only after proper evidence that the requisite level of examining expertise existed in the agency, assurances of adequate protections against abuse or error, and guarantees of comprehensive due process protections for applicants and employees. The enactment of the Proposed Act would protect against "abuses" that do not exist, and would refute the overwhelming evidence demonstrated by scientific studies, government surveys, and "real life" experience of the extraordinary effectiveness of polygraph testing as a screening and investigative tool, when these are restricted to situations where they are warranted.

In short, OPM is opposed to H. R. 4681. It appears to have been drafted without regard to any of the vitally important national security considerations where polygraphs have been found essential by at least 6 presidents. And secondly, its rationale, consisting of the "Findings" in section 2, is entirely inconsistent with the combined, decades-long experience of federal agencies. Unless the Congress can establish that such abuses have, in fact, occurred in the course of many polygraph examinations administered by federal agencies over this period of time, it would be imprudent to seriously restrict OPM's authority over the single most effective tool agencies have to prevent compromise of classified information.

OPM is prepared to participate in a constructive dialogue towards attainment of a responsible balance between the rights, privacy, and protections of federal employees, and the safety and security of the nation's most sensitive secrets. H.R. 4681 fails badly in that respect.

Sincerely,

Donald J. Devine  
Director